COMMUTATION OF TONNAGE DUTIES.

SPEECHES

OF

Hon. William H. Armstrong,

OF

LYCOMING COUNTY,

AND

Hon. James Chatham,

OF

CLINTON COUNTY,

DELIVERED IN THE HOUSE OF REPRESENTATIVES, PA., MARCH 10, 1862.

"Telegraph" Steam Print, Harrisburg, Pa.

REMARKS OF

Hon. WM. H. ARMSTRONG,

LYCOMING COUNTY.

The bill to repeal the act entitled "An act for the commutation of tonnage duties," being under consideration,

Mr. ARMSTRONG offered the following amendment:

Strike out all after the word "Whereas," and insert to make it read as follows:

WHEREAS, An act was passed at the last session of the Legislature, entitled "An act for the commutation of tonnage duties;" and

Whereas, It is alleged that said act is unconstitutional and void; therefore,

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same*, That for the purpose of testing the validity of the act of March 7, 1861, entitled "An act for the commutation of tonnage duties," that the Attorney General of the Commonwealth be, and he is hereby directed and required immediately to issue execution for the amount of the judgments held by the State against the Pennsylvania railroad company for the tonnage dues, and to collect the same according to law, and if necessary to contest the validity of said act before the Supreme Court, having jurisdiction of said judgment, and to carry the same by writ of error or otherwise to the Supreme Court for final decsion; and if the said act shall be declared unconstitutional or void, either in whole or in part, it shall be the duty of the Attorney General to proceed forthwith to sue for, recover and collect the whole, or such part of the arrearages of tonnage dues, as may be, by the law, recoverable.

Mr. ARMSTRONG. It is with reluctance that I approach this subject; and yet, sir, I feel that it is my duty to express my views in this matter, and I propose to do so very briefly.

It is well known to most members of this House that I voted against the tonnage tax bill last year; that I joined hands very cordially with the gentleman from Allegheny in opposing the repeal of the tonnage tax. I disapproved of that measure then, and I would disapprove of it now, if the bill before us proposed as an independent measure to commute the tonnage duties, as was done by the act of 1861. But, sir, the bill now under consideration, proposes legislation not legitimately within the province of the Legislature.

Sir, I have an insuperable difficulty, and it is this: As a member of this House, I cannot escape the obligations which the oath I have taken imposes, and under it I must meet every responsibility which attaches to my duties here, without attempting to cast them upon other persons. We have no right to expect greater integrity in the courts than we are willing to exercise ourselves. And, sir, for one, I am unwilling to stand in cowardly security behind them, and shrink from discharging the duties incumbent upon me, because I may imagine myself able to devolve them upon the judges. I believe, sir, in short, that the act of 1861, earnestly as I was opposed to it, became, on its passage, a contract, which it is not competent for us to annul. The question is now one of judicial determination, and has passed totally beyond the jurisdiction and power of the Legislature; and it is upon this ground that I am compelled to withhold my assent to its repeal. If it is *constitutional*, it is a legislative grant,

under which the rights of the parties have been irrevocably fixed, and is a contract which we have no power to annul. If it be *not constitutional*, it is simply void, and needs no repeal. I propose, sir, by the amendment I have offered, that this question shall be submitted, in the most direct and simple manner, to the adjudication of the courts, where it must, of necessity, come at last, whatever may be the action of this House.

My idea of the question is just this: Whatever act we may pass should be perfectly practical. It is altogether and worse than idle for us to attempt to enact laws which transcend our authority. Our legislation should at least present a probable intention of doing that which the Constitution will permit. Sir, I repeat, the question results in just this: Either this law can be repealed, or it cannot. If it is a contract, it cannot be repealed; if it is unconstitutional, it needs no repeal; or if it is void from any cause, it needs no repeal.

The difference between the proposition which I have submitted and that of the gentleman from Allegheny is briefly this: The measure I propose is diriect, and will immediately bring the question before the proper tribunal for adjudication and decision in the simplest manner of which it is susceptible. It directs the Attorney General to issue execution upon the judgments which are already recovered, and which are now held against the Pennsylvania railroad company. When issued, the Pennsylvania railroad company will immediately interpose the act of 1861, and ask that the execution be set aside upon the ground that the act of Assembly has discharged the debt. This raises at once, directly and pointedly, the question, the whole question, as to the constitutionality of the act. It is practical legislation, because if the act of Assembly is unconstitutional and void, then the money will be paid by force of the execution into the State treasury. If the act be valid, then it follows that the question is settled; and the Pennsylvania railroad has confirmed to it by the decision, whatever rights were conveyed by the act, and the question is ended.

The main question then is this, is it a contract? And if it be a contract, is it such an one as this Legislature can or cannot repeal. My convictions are clear that it is a contract and that it cannot be repealed. I do not intend to pursue this question very minutely nor in very great detail, but I desire to make myself expressly understood.

Let us not forget what is a contract; and I beg the attention of the House to this point, for it is just the point upon which this whole case must hinge. "A contract is a deliberrte engagement between competent parties upon a legal consideration to do or to abstain from doing a particular thing." Now, sir, were these parties competent? It is not possible to raise a question on that point. The Legislature was a competent party, and the Pennsylvania railroad was a competent party.

The question then is not as to the competency of the parties, because that cannot be controverted; they were both competent to contract. Did they contract? Is it a contract? And here, let me reply to a suggestion of the gentleman from Allegheny, made when this bill was last under consideration, that there is no consideration for the contract. Why, sir, a legislative grant requires no consideration. That which the Legislature does, is in the exercise of a sovereign power vested in them, under the Constitution, and it is a fallacy to say that the grant of the Legislature is void, unless there be a consideration to sustain it. The consideration which underlies a legislative grant, is whatever in the estimation of the law-making power may subserve the public good—a consideration of what the public interests may demand, and the grant requires no other consideration. For the gentleman to attempt to draw analogies between ordinary contracts between private parties and the legislative grant, which is always, as the gentleman himself has more than once expressed it, in the mere pleasure of the Legislature, is, it seems to me, an idle fallacy. This question, then, as to the consideration, has really nothing to do with the subject. What consideration, I would ask, underlies the granting of a charter? None whatever, except that the Legislature, in its sovereign pleasure, presumes that the public interest will be advanced by granting to certain persons corporate privileges. The State in the exercise of this sovereign power having erected a body politic, and clothed it with legal personality, not only may, but by the universal practice of this and all governments, does contract with it as with any other person—not for distinctive considerations, because, as an act of sovereign legislation, it sees fit to do so. This suggestion of want of consideration, I may be pardoned for saying, is an ingenious sophistry, and totally apart from the subject. The consideration has nothing to do with the valiolity of a legislative grant, but if it had, in this case, the consideration is ample and clear. Now, sir, again I inquire, was this a contract? for I take it for granted that the parties were competent. What does this act of 1861 require? The first item to which I will call the attention of the House, is that the Pennsylvania railroad company agreed to hasten the payments upon the purchase of the main line. They had agreed to purchase those works for a certain consideration; to pay within a certain limited time. Under the act of 1861 the terms of the original contract of sale were changed and the company agreed that instead of making payment at the times designated by the terms of the original purchase, they would make payment at an increased rate, which should be equal to four hundred and sixty thousand dollars a year. If you turn to the report of the Auditor General, pages fifty-one and fifty-two, you will find that the "commutation on tonnage tax," paid under this very act of 1861 into the treasury, was one hundeed and thirty thou-

sand dollars; and that, in addition to that, they paid to the State one hundred thousand dollars of bonds on account of the original purchase, for the six months payment which, under the act of 1861, became then due—making an aggregate payment of two hundred and thirty thousand dollars for the first six months under the contract created by this very act. Part of the express consideration of this act was the absolute payment of this very money to the Commonwealth, and it has been paid. Talk about consideration—here is a contract which I hold, sir, would have been binding without pecuniary consideration, but which nevertheless stands doubly fortified—not only by express consideration agreed, but by consideration paid. It is a contract executed. The Pennsylvania railroad company have paid into the State treasury two hundred and thirty thousand dollars, a large part of which, without this act, they would not have been required to pay; and in every succeeding six months they are required to pay two hundred and thirty thousand dollars more.

They were also required to file this contract for increased payment, in the office of the Auditor General, and they have done so. It was duly executed and delivered to the proper State officer, as required by the act. It is, therefore, a contract, sealed, signed and delivered, by the parties, and executed to the full extent of its requirements.

Further than this, the company were by this act *required*—mark you, not permitted, but *required* by its very terms to make a new and complete list of tolls. The discretion of the company was limited. They were compelled to make their tolls according to limited rates fixed by this act of Assembly. Now, sir, here were duties imperatively imposed upon the company, and these very duties discharged by the company, the amended toll sheet was duly filed in the office of the Auditor General, as required by the act, and the charges of the company cannot exceed its fixed rates.

Further than this, the fourth section provides that, "for the purpose of developing the resources of the State"—mark, for the purpose of developing the resources of the State—the Pennsylvania railroad company is required to expend eight hundred and fifty thousand dollars in aid to certain railroads, which are particularly designated. Now, sir, this is a provision imposed for the advantage of the State at large—in promoting the general development of its resources. It was not left optional with this company, but was absolutely required, and I venture to say that without it, it could not have passed. It entered largely into the consideration. The company was bound to make payment of eight hundred and fifty thousand dollars, which the act required to be made in a particular way, and with no discretionary control of it left to the company, and to some extent—how far, I am not informed, nor is it at all important—the payments have been already made. It was a thing which was required by the act of Assembly, and which the Pennsylvania railroad company have done.

By the provision, they were required to purchase at their *par value* the bonds of these companies. Now, sir, that is a contract which can be enforced; and they can be compelled to pay par for bonds whose intrinsic value may be nothing at all. It is the solemn covenant of this company, assumed irrevocably by the acceptance of the bill. It is a part of the contract and can be enforced by all the powers of the courts.

Here the contract stands, duly signed, sealed and delivered—and reposing to-day securely among the records of the State, and fully and fairly executed to the full extent of the covenants and conditions imposed upon the company. And yet, sir, we are called on in this House to repeal that act of Assembly—to repeal a contract entered into by the State, and already executed so far as its terms require, and the treasury of the State holding the very money of the company paid in pursuance of it; and which would not have been paid except for it; and *which it has not been suggested that the State shall refund.*

Now, sir, I wish to call the attention of this House very briefly to some other considerations; for I intend to be as brief as possible. I have not had leisure to examine this case to the extent which its importance demands. I take this ground (and I repeat it as being the unquestionable law) that, if this be a contract, it is not in the power of the Legislature to repeal it. The question is simply whether or not it is a contract; and I suppose that no logic of any gentleman here can establish that it is not. In my judgment, it is a contract within every meaning of the word. But, sir, it has been alleged here, that even if this act be in the form of a contract, it is void by reason of the corruption of the Legislature which passed it. It is attempted to maintain the position that if the law making power has been corruptly influenced in the passage of the act, the State may, of its own motion, repeal the act, even although it be a contract.

Now, sir, the gentlemen from Allegheny, who seems to have this bill especially in charge, and every lawyer in this House, knows full well that it is an established maxim of the law that the king can do no wrong. It is equally an established maxim of law with us, and it amounts to the same thing, that the government can do no wrong. In the same sense, the Legislature, in its legislative capacity, can do no wrong. This is a wise principal of the common law of the land.

Now, sir, you may pass this bill, and I think it will be found that the Supreme Court will speedily declare that we have transcended our authority, and encroached upon the peculiar power of the courts. With this deep conviction of our constitutional incapacity, I could not feel, sir, that I had discharged my duty were I to vote for the repeal of the act.

But, sir, no one knows better than the gentleman from Allegheny; that the hair splitti distinctions upon which the argument in support of the bill has thus far preceded are rather *captandum* arguments, intended to catch the ear of unprofessional gentlemen whose votes it necessary to secure. The gentleman knows full well that the wrong which any particular in vidual member of the Legislature may commit, is not the wrong of the Legislature. Why, loc at it. Suppose that an act of Assembly is passed in this House by a majority of a single vo (which is quite sufficient to pass it;) suppose you can show that one man whose vote determin the result was bribed. Is that fact to vitiate the law? It cannot be pretended that it woul and I doubt whether the gentleman from Allegheny would assert it. Under such a rule legisl tion would soon become impossible. I say that in such a case, though it may be proved that a individual whose single vote has determined the passage of the measure, was corrupted, ye that is not ground sufficient to vitiate the law. I maintain the position for this reason: it ha been the wisdom of the people to divide their government into three co-ordinate branches—t legislative, the executive and the judicial. The very liberties of the people depend upon keepir them distinct and separate. They cannot safely be permitted to intermingle or to trench upo one another. An act of Assembly is the united act of the House, of the Senate and the Governo Will it be tolerated by any people that one branch of the government shall thus summari arraign another—its equal—a co ordinate branch of the government, and allege that th department of the government was corrupt, or it may be bribed? Why, sir, in the language Judge Marshall, in the case of Fletcher *vs.* Peck, such a proceeding is "indecent and unseemly. I need not refer again to that case, which has been already discussed very fully in this Hous It is enough to say that the decision in that case has not been disputed from the time when was rendered until the present moment.

The gentleman from Allegheny, in the last discussion of this question, spoke about th power of the courts to interfere and take away a charter by *scire facias* or *quo warranto*. It ca be done unquestionably; but it is a judicial process under the exclusive control of the court—nc a power to be exercised by the Legislature by unprecedented innovation upon the authority an province of the judiciary. Why, sir, this encroachment of one department upon the legitimat functions of another must necessarily lead to incalculable mischief; it must result in swallowin up the liberties of the people. These liberties depend not alone and singly upon the Legislature but they rest in the equal, co-ordinate division of the executive, legislative and judicial power It is equally dangerous for the legislative department to encroach upon the judicial as it is tha the judicial should encroach upon the legislative, or that the executive should encroac upon either.

Now, sir, let me briefly turn your attention to the law as it is laid down by authority. read from Story's Commentaries on the Constitution, page ——. And I beg the attention of th House especially to the decisions of the courts upon the very points which are now at issue. Le us pause before we plunge into this dangerous attempt to repeal an act which the law as ex pounded in a thousand cases pronounces to be a contract in which the faith of the Common wealth stands securely pledged.

And here let me remind the House of the constitutional provision on which the decision of th question depends.

The 10th section of article 1 of the Constitution of the United States declares that "N State shall pass any law *impairing the obligation of contracts.*" And the Constitution of Penn sylvania, in section 17 of article 9, declares that "No expost facto law, *nor any law impairing con tracts* shall be made."

The interpretation of these provisions—so far as the question now under consideration i involved—has been uniform—and I believe will be found to be conclusive when this question whatever may be our action, comes for its final decision before the judges, to whose arbitrament i must come at last.

Let me then enquire, in the language of Judge Story.

"What is a contract? What is the obligations of a contract? What is impairing a con tract? To what classes of laws does the prohibition apply? To what extent does it reach, so as to control prospective legislation on the subject of contracts? These and many other questions, of no small nicety and intricacy, have vexed the legislative halls, as well as the judicial tribu nals, with an uncounted variety and frequency of litigation and speculations."

Speaking of these grants, he says:

"The Constitution is not chargeable with such folly, or inconsistency. Every grant in its own nature amounts to an extinguishment of the right of the granter, and implies a contract not to re-assert it."

Now, this is the doctrine applicable here. If this be a contract, (and I think it cannot be successfully maintained that it is not,) it is incapable of repeal, except with consent of parties. Again, on this question, I read briefly. I wish that time and your patience would permit me to draw the attention of the Legislature more fully to the discussion of this very point, as contained in this volume and others.

Speaking of the Dartmouth college case, familiar to all lawyers on this floor, the same authority says:

"The constitutionality of the act was contested, and after solemn argument, it was delibe-y held by the Supreme Court that the provincial charter was a contract within the mean- of the Constitution, and that the amendatory act was utterly void as impairing the obligation hat contract.

"The doctrine is held to be equally applicable to grants of additional rights and privileges n existing corporation, and to the original charter by which a corporation is first brought existence, and established. As soon as the latter become organized and *in esse*, the charter omes a contract with the corporators.

"And the doctrine is equally applicable to grants of additional rights and privileges."

But I will not weary the House by more extended reference to the very numerous cases in ich this doctrine is discussed and approved.

But, sir, I have spoken of the danger to our liberties, of this spirit of innovation and roachment by one department of government upon the rights and perogatives of another.

On this point the same author remarks:

"Where there is no judicial department to interpret, pronounce and execute the law, to decide troversies, and to enforce rights, the government must either perish by its own imbecility, or other departments of government must usurp powers, for the purpose of commanding obedi- e *to the destruction of liberty*. The will of those who govern will become, under such circum- ces, absolute and despotic, and it is wholly immaterial whether power is vested *in a single it, or in an assembly of tyrants*. No remark is better founded in human experience, than that Montesquieu, that 'there is no liberty, if the judicial power be not separated from the legisla- and executive powers.' And it is no less true, that personal security and private property entirely upon the wisdom, the stability and the integrity of the courts of justice."

Mark you, sir, it is wholly immaterial whether this encroachment upon private rights, this nny, is to be exercised by one tyrant who may call himself emperor, king, despot, anything, whether it be exercised by a multitude of tyrants, assuming to act in the capacity of legislators. n contending against a dangerous innovation. In every law book which can be consulted on question—in every commentary upon constitutional law—this doctrine is invariably held, t these insidious encroachments by one department of the government upon an another, dangerous to liberty, and are to be most carefully and assiduously watched and restrained.

Now, sir, whatever may be the aspect of this question—whether you repeal this law or ther you do not—the question comes back again at last to the jurisdiction of the court. You not avoid the court. The suggestion was made here by the gentleman from Allegheny, (Mr. LLIAMS,) upon the last argument on the bill, that the doctrine of presumptions entered largely the question—that the law of 1861 was presumed to be constitutional, and that the same sumption would follow this law, and that when it came before the court it would "have the sumption in its favor." Now, who ever before heard of arguing a constitutional question n presumption? How idle—how perfectly idle! Presumptions in regard to a constitutional stion! Why, sir, presumptions hold no place in the argument—not the slightest. A consti- onal question when once raised, (and it matters not how it comes before the court,) has no sumption about it that can affect the interpretation A presumption follows the act just so that *prima facie* it is constitutional; but when it comes before the court for adjudication, pre- ptions have no place whatever; it becomes solely and purely a question of constitutional rpretation.

Mr. WILLIAMS. Does the gentleman assert that the law, when brought before the court, es to be *prima facie* constitutional?

Mr. ARMSTRONG. No, sir. It does not cease to be *prima facie* constitutional. The gentle- n knows that just as well as I do; and he knows just as well that when an act of Assembly es before the court, for judicial interpretation, it comes there upon its merits, and the court ermines the interpretation of the Constitution as applied to that act of Assembly, totally irre- ctive of presumptions. I would ask the gentleman whether they do not?

Mr. WILLIAMS made a gesture of dissent.

Mr. ARMSTRONG. Then I take issue with the gentleman, and every law book that he ever d, and all he ever can read, will bear me out in this position. Let him produce one single hority, big, little, or indifferent, and I will submit. It cannot be done. I am not here for purpose of tossing my feeble reiteration against that of the gentleman from Allegheny, way of asseveration as to what is the law. I come here and read the law from admitted stitutional authorities—the solemn decisions of the ablest judges the country has produced, who have given to this question the very highest efforts of their genius and learning.

Judge Story further remarks: "The universal sense of America has decided, that in the last rt, the judiciary must decide upon the constitutionality of the acts of the General and State ernments, as far as they are capable of being made the subject of judicial controversy."

Now, here is authority directly in point—in the whole history of this country—that of the ional government, and of all the respective States—in the history of England, which is the at fountain of our law, there cannot be found an instance in which the Legislature has been mitted to give authoritative exposition to an act which involved simply a question of constitu- al construction. No, sir, never. I say again that this question must come ultimately to the rts; it cannot escape their revision. Suppose that this bill be now passed; the company

resist the operation of the law, the question is brought before the courts unavoidably and imm diately. It goes before the courts as a question of constitutional law, and will be decided by the upon the inspection of the bill and upon the question of contract.

But sir, further than this, where would be the end, if our Legislature may thus attempt determine the constitutionality of the acts of their predecessors, making their supposed uncons tutionality a ground of repeal. If it be in our power to repeal the act of 1861, what is to preve the Legislature of 1863 from re-enacting the act. Why, sir, the result of this doctrine would interminable confusion; there would be no end to this process of enactment and repeal.

Patrick Henry, in discussing the question of the adoption of the Constitution of the Unit States uses this language:

"The honorable gentleman did our judiciary honor, in saying that they had firmness enou to counteract the Legislature in some cases. Yes, sir, our judges opposed the acts of the Legis ture. We have this land mark to guide us They had fortitude to declare that they were t judiciary, and would oppose unconstitutional acts. Are you sure that your federal judiciary w act thus. Is that judiciary so well constituted, and so independent of the other branches, as o State judiciary? Where are your land-marks in this government? I will be bold to say, y cannot find any. I take it as the highest enconium on this country that the acts of the Leg lature, if unconstitutional, are liable to be opposed by the judiciary."—[2 *Elliott's Debates*, 248.

It is, in the judgment of Patrick Henry, in the highest degree indecent to submit the det mination of constitutional questions to any other tribunal than the judiciary.

Now, sir, it has been further said by the gentleman from Allegheny, (Mr. WILLIAMS,) th "there is great danger of the judiciary encroaching upon the powers of the Legislature." Wh sir, that idea seems to me a phantom. When has there been such danger? Where has the juc ciary ever encroached in this manner? I know perfectly well that the gentleman from Alleghen disturbed by some distorted vision of railroad bonds, thinks that the present Supreme Court a incompetent to decide upon great constitutional questions. I am not disposed to take iss with him upon that question. It is sufficient that the sense and judgment of the whole prof sion is against him. But it is not a question of their competency, in which I may be permitt to say that I have entire confidence; but, whether they be competent or not, you cannot esca their decision; They are not only authorized to decide, but the Constitution requires them decide; the decision rests with them alone, and cannot be wrested from them, nor pronounc by any other power. But on this subject, the learned judge, from whose commentaries I re says:

"It may, in the last place, be observed that the supposed danger of judiciary encroachmen on the legislative authority, which has been upon many occasions reiterated, is in reality a pha tom Particular misconstructions and contraventions of the will of the Legislature may now a then happen; but they can never be so extensive as to amount to an inconvenience, or, in a sensible degree, to affect the order of the political system."

But, suppose that we may declare a law to be unconstitutional, and repeal it on this ground suppose that we may assume that part of the judicial function—I ask what becomes of the distr bution of the powers of the government, so wisely divided into three departments. Upon th point let me again read from Judge Story:

"What becomes of the limitations of the Constitution, if the will of the people, thus unof cially promulgated, forms for the time being, the supreme law and the supreme exposition of t law?"

Now, mark the inconsistency. We become first the enactors of the law; then we becon its expositors, thus by our own act vesting in ourselves the whole powers of the judiciary and t legislative department. We assume to say that the law which we passed is no contract; th it is fairly and entirely within the power of the Legislature and may be repealed. Judge Sto says:

"If the will of the people is to govern in the construction of the powers of the Constitutio and that will is to be gathered at every successive election at the polls, and not from the deliberate judgment and solemn acts in ratifying the Constitution, or in amending it, wh certainly can there be in those powers? If the Constitution is to be expounded, not by i written text, but by the opinions of the rulers for the time being, whose opinions are to preva the first or the last?"

Whose opinion is to prevail—that of the Legislature of 1861, or that of the Legislature 1862, or of 1863 or 1864?

"When, therefore, it is said that the judges ought to be subject to the will of the people, ar to conform to their interpretation of the Constitution, the practical meaning must be the repr sentatives of the people in the executive and legislative departments, and should interpret t Constitution as the latter may, from time to time, deem correct."

Here we have the question presented in all its length and breadth. This bill proposes th this Legislature shall impose upon the Supreme Court, the duty of deciding upon an act Assembly according to this Legislature's interpretation of that Constitution.

Upon the general proposition which I have annonnced that a Legislative grant is a contract, suppose, sir, it is quite necessary to cite further authority than I have already done. To a lawyer to state it is all that is necessary, and I presume that even my friend from Allegheny, (Mr. WILLIAMS,) who is so zealously affected in this cause, would not venture to dispute it. But upon the question of repealing such an act, let me cite the case of Ferret *vs.* Taylor, 9 Cranch, 52, in which the Supreme Court uses the following language:

"But that the Legislature (of a State) can repeal statutes, creating private corporation, or confirming to them property already acquired under the faith of previous laws, and by such repeal can vest the property of such corporations exclusively in the State, or dispose of the same to such purposes as they may please, without the consent or default of the corporation, we are not prepared to admit; and we think ourselves, standing upon the principles of natural justice, upon the fundamental laws of every free government, upon the spirit and the letter of the Constitution of the United States, and upon the decision of most respectable judicial tribunals in resisting such a doctrine."

In brief *resume* of the question, I may say it comes down to just this: the Legislature of 1861 has passed an act of Assembly which I say is a contract, (and I challenge investigation and argument upon that point,) and this act being a contract it is not competent for the Legislature to repeal it.

This question of fraud in the legislative department of the government in passing an act of Assembly, and which is attempted to be raised here, cannot be entertained by the courts, and cannot be passed upon by this Legislature. The remedy for this evil—and it is an efficient one—is vested exclusively in the people, who by their return of proper persons, *at all times*, should protect themselves against this sort of abuse, It is a power resting in the people alone; and to be exercised by them in their primary and sovereign capacity at the polls—they have not clothed the Legislature with this supervisory power over themselves. It is not competent for this Legislature to inquire into the acts of its predecessor; nor is it competent for the courts thus to inquire. There is no writ that could bring the Legislature, as such, before them; and least of all, a Legislature which is dissolved, and has no present existence whatever. There is no power by which it could be done. There are no pleadings that could raise the question. There is no precedent for such an act in any case, in England or America—no, not one. I beg the House to bear this fact in mind. I here challenge contradiction, when I say that in the whole judicial history of England, or of the United States, there is not one case in which it has been attempted to arraign the Legislature before a tribunal, to investigate the question of fraud in the passage of a legislative act. It is wholly impracticable, as well as utterly indecent. The leading case bearing upon the question is that of Fletcher *vs.* Peck, in which the courts refused to hear testimony, and pronounced it to be "unseemly and indecent," that such an attempt should be made, because the powers of government were vested in three co-ordinate branches, and for one to assume the controlling jurisdiction over the other, would break down the very principles of liberty on which our Constitution is based.

I need not refer to other cases to show that the Legislature has no judicial power. The gentleman, I have no doubt, will admit that, as a general principle. How he will attempt to distinguish this case, in a manner to take it outside of that general principle, I am quite at a loss to know. That the Legislature has no judicial power, cannot be questioned If it were disputed, it would be easy to refer gentlemen to the case of De Castellux *vs.* Fairchild, decided some years ago, in which the Legislature attempted to pass an act of Assembly to grant a new trial. I believe the case was from Fayette county—I am not sure. The act assumed to grant a new trial in a certain case; and the court would not recognize any such jurisdiction in the Legislature, and decided that there was no power in the Legislature to overrule the previous decision of the courts.

In Curtis's Commentaries upon the Constitution, (and I will refer to this very briefly,) it is declared in section 253: "It is important, however, in the distinction as to laws which divest vested rights, to observe that if the rights have vested under a contract, or a grant of a State, a law which impairs or takes them away impairs the obligation of a contract, since that obligation necessarily includes an undertaking not to resume or interfere with the rights granted"

Now, there is a settlement to the whole question If the rights vested under the act of 1861 were the result of a contract at all, then the rights have so vested that the State cannot take them away, because it is in contravention of the Constitution of the United States and the Constitution of the State of Pennsylvania, which both expressly forbid that any law shall be made impairing the obligation of contracts. And it is admitted that the grant of a State does constitute a contract.

But as to the question of fraud—and in this connection let me remind the House that the gentleman from Washington, in the last discussion of this question, said that he did not rest the passage of the bill upon the matter of fraud at all; he is prepared to vote for the repeal of this act, totally apart from the question of fraud. In that, I opine, he differs from the learned gentleman from Allegheny, because that gentleman expressly put the case upon the ground that, because there was fraud in the contract, because it was unjust and inequitable to execute a contract which had been obtained by bad faith on the part of one of the contracting parties, therefore the act could be repealed.

Mr. WILLIAMS. Will the gentleman allow me to ask him whether he refers to argument in relation to the bill now pending, as putting the case upon the ground of f simply?

Mr. ARMSTRONG. I refer to the remarks made by the gentleman at an early stage of discussion. (I do not remember the particular question pending,) in which the gentle distinctly took the ground that the contract was void, because it had been obtained fraudulent means.

Mr. WILLIAMS. The gentleman wi l allow me to explain. The only section of the prea submitted by me which did charge fraud, or did refer to the probable existence of fraud in the of reputation or rumor, was excluded by the House; the preamble, outside of that, conta no reference to any positive fraud; and I stated expressly that I did not put this case on ground—that I held the act might be repealed without showing fraud. I do not say that t is any fraud proved, and I do not propose, of course, on this bill, to act upon that presump

Mr. ARMSTRONG. Then I take it that this is an abandonment of the question in re to the strongest position on which the gentleman has heretofore based this case. Now, I the members of this House to bear that admission in mind at this time, and I wish the pe of the State to know that it is now distinctly avowed that the repeal of the act is not so upon any allegation of fraud by the company in procuring its passage. It is thus red simply and purely to a question of constitutional construction and power. And upon this am I at issue with the gentleman and the advocates for its repeal. Let the gentlemen who propose to repeal this act bear in mind that it is now distinctly avowed that this bill is not rested on the ground of fraud.

Mr. WILLIAMS. The gentleman will, of course, understand me as referring, (and lawyer he will recognize the distinction,) to fraud, in fact not anything fraudulent in law fraud in fact.

Mr. ARMSTRONG. Well, sir, the courts long ago came to the conclusion that the distin between frauds in law and frauds in fact is very limited indeed; and as this case stands, there be no fraud in law that is not a fraud in fact. There is no room here for the distinction; it distinction without a difference. In this particular case, the only fraud that can be alleg all is the fraudulent means used in obtaining the passage of the bill. That is the fraud, if it is fraud at all. The idea of false suggestion, in the preamble to the act, which the gentle dwelt upon at some length, is a matter of very minor consequence indeed. It cannot be all that there is fraud committed upon a party who has in his hand and before his eyes the term of the contract which he proposes to execute. There is here no pretension of decei practiced upon the Legislature. To take that ground is totally to abandon the other; and I it that the position just avowed by the gentleman is an entirely novel position for him, bec heretofore it has been argued that fraudulent means were used to procure its passage—that was corruption in the Legislature—that a majority of the members were corrupt, and because of this corruption the act obtained by these fraudulent means was void. That wa argument.

Mr. WILLIAMS. It was the argument on the question of investigation, not on this bi

Mr. ARMSTRONG. Well, sir, the records will show the facts; I am not disposed to bi assertions in regard to the matter; but every member of this House knows perfectly well that position assumed in reference to this bill was that it was a fraud. That was the position; was the language used by more than one gentleman; I am not solely replying to the gentle from Allegheny, but the position was taken by others, as well as himself, that the sole gr on which the repeal of this bill rests is fraud.

Now, sir, I am perfectly free to say that, so far as fraud entered into that contract, I there were means by which that fraud could be reached; but as a lawyer, as a professional I say that it cannot be reached by the method proposed here—that there is no power in Legislature to repeal a legislative contract or grant because of corrupt means used in the proc of its passage. The presumption is that the legislative power, as part of the general sovere can do no wrong, just as in England, the maxim is "the king can do no wrong." Here we the maxim to the government, and the maxim is of equal significance both there and here is analagous to that other maxim of law, that "the king never dies." The government exists. The particular man may die; but the sovereignty never dies. A particular Legisl may go out of existence; the legislative power never dies. You cannot arraign the legisl power for any particular act of malfeasance on the part of any individual member of Legislature. He is amenable individually to the laws, which provide the punishment for malfeasance. I would make those laws as stringent as they can be made. I would punish it the utmost severity any attempt to corrupt the Legislature by any person at any time. But I would not sacrifice the great principles of public liberty which underlie the division of judi legislative and executive powers by attempting thus to encroach upon the judicial function to usurp in the Legislature a power which the Constitution and the laws have never vest them.

"The truth is," says Justice Story, "that the legislative power is the great and overruling ower in every free government. It has been remarked, with equal force and sagacity, that the gislative power is everywhere extending the sphere of its activity, and drawing all power into s impetuous vortex."

There lies the danger pointed out over and over again. The danger consists in the Legislature rawing into into "impetuous vortex" all the powers of the government.

"The representatives of the people will watch, with jealousy, every encoachment of the exe- ative magistrate, for it trenches upon their own authority But who shall watch the enroach- ent of these representatives themselves? Will they be as jealous of the exercise of power by emselves, as by others? In a representative republic, where the executive magistracy is care- lly limited, both in the extent and duration of its power; and where the legislative power is xercised by an assembly, which is inspired by a supposed influence over the people, with an in- epid confidence in its own strength; which is sufficiently numerous to feel all the passions which tuate the multitude, yet not so numerous as to be incapable of pursuing the objects of its pas- ons by means which reason prescribes; it is easy to see, that the tendency to the usurpation of ower is, if not constant, at least probable; and it is against the enterprising ambition of this, e (the legislative) department, that the people may well indulge all their jealousy, and exhaust l their precautions."

Sir, such is the language of a judge who has been one of the distinguished lights of the judici- y—a bright ornament of the Supreme Court of the United States, in discussing this very precise estion—the danger to the liberties of the people resulting from attempted innovations by the egislature upon the other branches of the government.

But it may be asked, and it has been asked in this discussion, "What is to be the remedy, if ere be any misconstruction of the Constitution on the part of the government of the United tates, (or, as in this case, of a State,) or its functionaries, and any power exeraised by them, not arranted by its true meaning?" To this question a general answer may be given in the words its early expositors: "The same as if the State Legislatures should violate their respective nstitutional authorities." In the first instance, if this should be by Congress, "the success of e usurpation will depend on the executive and *judiciary departments*, which are to expound and ve effect to the legislative acts; and, *in the last resort*, a remedy must be obtained *from the people*"

Now, there is the remedy. Suppose (and it has been much dwelt upon) that any alleged frauds procuring this act, cannot be inquired into by the courts, and cannot be inquired into by the egislature. Where, it is asked, is the remedy? Now, everybody admits that in such a case an il exists; no one pretends to question that it is intolerable—a monstrous outrage that any mem- r of the Legislature should be corrupted; every one admits that it is such an evil as requires rrection. Yet, wherein shall this correction consist? Let not the remedy be worse than the sease. Let all due punishment, severe and certain, be visited on the wrong doer—but let us ot break down those healthful divisions of power between the co-ordinate branches of the gov- nment, but refer the question back to the people—the source of all power, and compel them, ught by this stern lesson, and by the stress of their own necessities, to send to the Legislature, en who rise entirely above all suspicions of dishonesty and fraud. Let the Legislature never susceptible of corruption. The remedy rests there, and it cannot be put elsewhere. Why, r, how could a court inquire in such a case? I ask the gentleman again, what writ is there at would reach this case? There is no process that would reach it; there is no writ that uld bring any Legislature, or any of its branches before the court, or arraign upon it any of e co-ordinate departments of Government; nor are there any pleadings that would raise the estion. In none of the English authorities—in none of the United States authorities—nowhere ill we find any such a power maintained; and I assert it here, and I think it cannot be contra- cted, that such a case has never risen in the whole history of legislation. And yet we are in- ted here to inaugurate this system which would inevitably work so disastrously.

Now, sir, let me call attention to the precise point in my amendment. The State of Penn- lvania held two judgments against the Pennsylvania railroad company, I think, for about three ndred thousand dollars. (I do not at present recollect the precise amount.) I propose to in- itute such legal proceedings as may be necessary for their collection, thus, by the ordinary d approved course of judicial proceedings, to place the money in the treasury, if it can done.

Mr. BIGHAM. As a matter of fact, do those judgments remain unsatisfied?

Mr. ARMSTRONG. I have been informed that, as a matter of fact, they remain unsatisfied, d that execution may issue upon them. But even though they should be of record satisfied, would make no difference; for the gentleman knows very well that a judgment on which satis- ction has been erroneously entered is always open to the examination of the court, and the try of satisfaction may be stricken off. That circumstance would make no particular difference, cept that it might slightly change the form of preliminary proceeding.

The amendment then proposes to collect the money, and put it into the treasury. Now, if e act of last session be not a constitutional and valid act, this can be done. There is nothing prevent the collection of that money but this act of Assembly. If the act is unconstitutional,

then it is void, and does not interpose any obstacle; and no power on earth can prevent the collection of the money, for the corporation is perfectly solvent. And if it be constitutional, then in my judgment, it is a contract, which cannot be repealed. If, on the other hand, it is unconstitutional, it is of course void *ab initio;* and it is idle to waste time in this discussion, and stultify ourselves by passing an act of repeal.

Why is it, sir, that the advocates of the repeal resist so tenaciously the reference of this question to the courts, to which, as they very well know, it must inevitably come at last. Is it, sir, that the public mind may be kept in continual agitation upon the subject, and that out of the public disquietude, some personal, political, or other advantage may be gathered. Sir, I have no distrust of the public virtue. It will stand by the plighted faith of the Commonwealth, and execute her contracts, though she suffer.

Now, sir, let me state the main difference between the amendment of the gentleman from Allegheny and my amendment to the amendment.

The gentleman, in his amendment proposes to reinstate the tonnage tax. In this attempt he meets with just this difficulty: If this be a valid contract, it is one of the provisions of the law that this tonnage tax shall not be reimposed, unless it be equally imposed upon other railroad companies of the State. There you meet precisely the same constitutional objection to which I have referred, and which is to be answered in precisely the same way. If the act of last session be unconstitutional, as I have already said, it needs no repeal, and without any legislative act the rights of the State revive; and whatever arrearages of tonnage dues there may be, can be collected by process of law, without any act of Assembly Therefore, the repeal of the act is unnecessary, even for this purpose.

The proposition of my amendment is, that we shall proceed to collect this money, if it can be collected; that the Attorney General be instructed to test the validity of the act of 1861 I have used the word *validity*, instead of constitutionality, because it is a word of larger meaning. My proposition is not dependent upon the discretion of the Attorney General; it instructs him absolutely to test the validity of the law; and if it be declared unconstitutional or void, in whole or in part, then he is directed to proceed immediately to sue for and collect the whole residue of the tounage dues.

Now, sir, in view of these considerations, what possible objection can there be to my proposition? It covers this whole case. It strikes out the preamble which attempts to make this Legislature speak the particular sentiments of particular men, who, I will not deny, entertain honest convictions which are perfectly honest, but who, I believe are strongly biased with hostility to the railroad Why make this Legislature express themselves in the extraordinary manner of the gentleman's preamble. Let us do what we can in a legitimate and proper way to effect our purpose. What I propose, that this Legislature shall do is to recover the money, if it can be done, and put it back into the treasury of the State—to sue for and collect not only the judgments, but the arrearages of the tonnage dues.

The proposition is very plain and straight forward Who dare say that it does not propose a sufficient, dignified and proper course. It meets the question fully and in precisely the same manner that the rights of every citizen are ascertained. It proposes to deal with the question in the only legitimate manner in which it can be dealt with.

With these convictions, how can I vote for this bill? As I have said, I was opposed to the passage of the act, and resisted it at every stage of its progress. It was I who wrote and offered at the time, as the journals of last session will show, the amendment which proposed to compel the company to pay into the treasury the whole amount of tonnage dues accrued before the passage of the act. And, sir, I would now oppose the repeal of the tonnage duties were it a question still within the power of the Legislature. I would stand side by side with the gentleman from Allegheny, as I did before I joined hands in opposition to the act with the gentleman from Bedford, the gentleman from Tioga and others whom I see here, in doing all we could to prevent its passage. But, sir, I cannot forget that I have sworn "before Almighty God the searcher of all hearts, that I will support the Constitution of the United States, that I will support the Constitution of the State of Pennsylvania, and that I will discharge my duty as a member of this Legislature with fidelity, and that, as I shall answer to God in the great day" Would it be fidelity if, with strong convictions, that this law cannot be repealed, I should attempt to shirk from the share of responsibility which attaches to my office, and say to the Supreme Court: "You, not take the responsibility of the act which I, in my cowardice, dare not do." No, sir, I meet the question on higher ground than that I believe that this law cannot be repealed—that it stands protected under the plighted faith of the Commonwealth. The people, by their representatives have said to the Pennsylvania railroad company, "This law is to you a contract, you have performed its conditions, you paid the consideration." When we have thus made a solemn contract shall the great State of Pennsylvania stand up before the world and say, We call back our plighted faith; you have executed the contract. We hold it in possession; you have paid the money, and it lies securely in our coffers—but you shall not call this a contract. We rue our bargain and our sovereignty will enforce your submission.

And here I may remark for a moment upon another fallacy, which has been pressed in the argument. We talk about the people. What are we but people. Sir, the people have passed this act. What are we but a small side-stream of the great current of the State, which flows annually into this House. We shall soon give place to other men who may still better than we fulfil the wishes of the people. It was the people that decreed that this law should pass, that these rights should be vested, that the Pennsylvania railroad company should have these privileges; and by that sovereign act they have them. It may be said that the grant of these privileges was wrong, that they ought not to have been bestowed, and I concur in that opinion; but since it was the pleasure of the sovereign people of this State, acting through their constituted Representatives, to confer those powers, I say again, sir, that it is impossible for us to repeal the act, and the question must ultimately be referred to the consideration of the Supreme Court, to whom only it properly belongs. The proposition which I have submitted brings the question directly, clearly and pointedly before that tribunal in such a manner that there can be no evasion. I maintain, sir, that this is a right measure for this House to adopt. It meets the question as a business question. It excludes from it whatever there may be of political meaning, if there be any; it allays that feeling of distrust which might arise from attempted legislation of a different character. Why, sir, how long will men continue to invest upon the faith of chartered rights if successive legislatures may destroy them at will? The bonds of the Pennsylvania railroad company have risen in value in consequence of this act. The rights of third persons have intervened in a thousand ways. These bonds have become valuable and oftentimes permanent investments to thousands of present holders, by purchase since the act was passed, and shall it be said that we have the right now to diminish the value of these investments by repealing the act which gave them their value—and that without one word as to compensation for consequent losses. I say again, sir, in my judgment it cannot be done.

I am sorry to have trespassed so long upon the patience of the House, and thank you for the attention with which you have heard my remarks. I feel, sir, that this is an important question, and one which we should meet in all its responsibilities—with all due fairness to the company, and with all due regard to the plighted faith of the Commonwealth.

[Mr. WILLIAMS replied to Mr. ARMSTRONG, and argued that the act of 1861 commuting the tonnage duties was without consideration; and that the act is no contract, because there was no constitutional power to pass it, and that by reason of the want of constitutional power it was a *fraud in law*. It was not alleged that there was any *fraud in fact* in procuring its passage]

Mr. ARMSTRONG replied as follows: I entirely agree with the gentleman, that he has traveled greatly out of the record. I think, sir, that he has come very wide of the mark. I agree with him in both the opening and closing remark of his argument. He stated to this House that he was not satisfied with the argument of the gentleman from Lycoming; and I have no doubt that such is the fact. I have never known him to be satisfied with anybody's argument unless indeed it were his own.

Mr. WILLIAMS. I am satisfied with the gentleman's argument of last year.

Mr. ARMSTRONG. And so am I. I maintain that the very doctrine which I then advocated is the precise position on which I now stand. I am free to say that last session, when this question was up for discussion, I did declare that I had very strong doubts in reference to the constitutionality of that particular part of the law which proposed to release the payment of the tonnage dues already earned, and I do now say that I am inclined to adhere to that opinion so far as it was then expressed. But, sir, there are grave doubts about it and nothing short of the decision of the Supreme Court can end them.

But, the gentleman very ingeniously attempts to argue that, because I then entertained that opinion, and because I would entertain it now, therefore we, the members of the Legislature, are now to become the judges of that question. This, sir, is the point of divergence. The gentleman is a lawyer so experienced that he never ceases to be a lawyer; and he pursues this question with such subtlety, such indirectness and such careful avoidance of the real points, as evidences his ingenuity much more than the soundness of his judgment.

Now, look at this question. Admit for the argument, if you please, that in my opinion, and in the opinion of the gentleman from Allegheny, (Mr WILLIAMS,) or in the opinion of any lawyer on this floor, that the act of last session is unconstitutional. Let this be the opinion of any number of members of this House, does that make it so? Can he or I pronounce judgment upon that fact? Can we settle conclusively this disputed point? Where rests the power of decision? I say, sir, that it is vested in the Supreme Court, alone by that judicious division of constitutional powers which keeps the co-ordinate branches of the government apart. Why, sir the gentleman has enunciated upon this floor a doctrine which I do not hesitate to pronounce to be astounding. I venture to say that there is no other lawyer on this floor who will turn his attention to the careful investigation of the question, that will agree with him upon these points. I cannot comprehend this denial of a doctrine which to my mind is so perfectly clear, so perfectly free from difficulty. Why the gentleman asserts that there is no consideration for this grant, and that therefore it is void. When

I asked him a question distinctly upon that point, he did not reply clearly. Did any of you understand his reply? I did not It was a careful avoidance of a direct and distinct reply to a pointed question. Sir, I re-affirm that a legislative grant is not dependent upon a consideration It is a thing done in the sovereign pleasure of the Legislature—a thing done *ex mero motu*, as the gentleman has expressed it. He is very apt at quotations, but sir, these elegant extracts —these boquets and flowers of rhetoric with which he besprinkles the Legislature, are not sound arguments which come down to the close discussion of legal questions. Now, what is his position. He says that my amendment virtually admits the correctness of his position. Not at all. He assumes the right to repeal—which I deny. He invokes the decision of the Legislature—I would refer it to the courts where only it properly belongs. The presumption, as the gentleman says, is that the act of last session, is constitutional. I agree with him. Now, if that presumption follows the act, it remains constitutional, and just because of this presumption it cannot be repealed. This is the conclusion from his own premises, and it ought to be conclusive —I think it is, irresistably and unavoidably so If the presumption be that the act is unconstitutional, it remains a constitutional act until a duly authorized authority declares it to be void, because, under the presumption, that rights have vested, the rights being vested are covered by the presumption, and nothing but the direct decision of some power having competent authority can ever destroy the presumption or take away the rights which have vested under the acts.

"As to the manner of construing parliamentary grants for private enterprise, there are some recent decisions which, in my judgment, establish two very important principles, applicable directly to the present case, which, if not confirmatory of the views which I have endeavored to maintain, are at least not repugnant to them. The first is, that all grants for purposes of this sort are to be construed as contracts between the government and the grantees, and not as mere laws; the second is, that they are to receive a reasonable construction; and that if, either upon their express terms, or by just inference from the terms, the intent of the contract can be made out, it is to be recognized and enforced accordingly."

Here it is laid down by an authority recognized in the Supreme Court of the United States, and in every State in the Union, that these grants are not mere laws, but that they are contracts, which will be, and must be, enforced. Now, sir, here is a contract. The presumption is, that it is a contract. Standing alone, as a mere matter of enactment, it does not stand in the relation of an ordinary law.

The gentleman very ingeniously argues that this Legislature may repeal a law. Who pretended to dispute it? Certainly not I. That the power of the Legislature extends to the repeal of an ordinary law, there can be no question. It is just as clear, however, that the Legislature cannot repeal a law in the nature of a contract. Now, sir, these distinctions are vital; and yet the gentleman, in his argument, most carefully avoided the consideration of this very vital point of the discussion.

The gentleman has taken the liberty to refer to some letters, not stating from whom.

Mr. WILLIAMS. I did state.

Mr. ARMSTRONG. And I will take the liberty of referring to a letter also. I will take occasion to refer to a letter in the *Federalist*, written by James Madison, upon this very point—the power of a Legislature to impair the obligation of a contract. That I may not be misunderstood, I will again call the attention of the Legislature to the constitutional provision on this subject. The Constitution of the United States provides that no bill of attainder or *ex post facto* law, or any law impairing the obligation of contracts shall be passed. The provision of the Constitution of Pennsylvania is in precisely the same terms, with the exception that it omits the word "obligation." In the one case the declaration is, that no law shall be passed impairing the obligation of contracts; and in the other, that no law impairing contracts shall be passed. The current of decisions on both these clauses has been uniformly the same; they are interpreted to mean the same thing. Now, sir, Madison, in commenting upon this clause of the Constitution of the United States, uses this language: which is equally applicable to the Constitution of Pennsylvania, since, as I have shown, they both contain the same provision.

Now, that is sound logic; and I hold it to be sound law. As to this attempt to create another presumption by means of a law which we are to pass, the gentleman himself admitted that I was correct in stating that constitutional questions are never decided upon presumptions; presumptions have nothing to do with such questions; their decision is a pure matter of interpretation. The presumption as to the constitutionality of this act of 1861 remains; and it covers with its protection all the contracts which have been made under it; and it must remain until that presumption is rebutted by the decision of the Supreme Court, the only power that can pass upon it.

Now, sir, let me read from another book on this question. I find that in Story on Contracts, page 702, the following language is held:

"Bills of attainder, *ex post facto* laws, and *laws impairing the obligation* of contracts, are contrary to the first principles of the social compact, and to every principle of sound legislation. The two former are expressly prohibited by the declarations prefixed to some of the State constitu-

tions, and all of them are prohibited by the spirit and scope of these fundamental charters. Our own experience has taught us, nevertheless, that additional defence against these dangers ought not to be omitted. Very properly, therefore, have the convention added this constitutional bulwark in favor of personal security and private rights; and I am much deceived if they have not in so doing, faithfully oonsulted the genuine sentiments and the undoubted interests of their constituents. The sober people of American are weary of the fluctuating policy which has directed the public councils. They have seen with regret and with indignation, that sudden changes and legislative interferences, in cases affecting personal rights, become jobs in the hands of e nterprising and influential speculators, and snares to the more industrious and less informed part of the community. They have seen too,, that one legislative interference is but the first link of a long chain of repetitions, every subsequent interference being naturally produced by the effects of the preceding. They very rightly infer therefore, that some thorough reform is wanting, which will banish speculations on public measures, inspire a general prudence and industry, and give a regular course to the business of society."

Now, sir, here is Madison commenting on the very clause of the Constitution now under consideration, declaring that it is of the very essence of public safety and public liberty that the Legislature shall be restricted from encroachments upon judicial power.

The whole object of the proposition which I have submitted, is to turn over to the courts, (the only authorative power to decide,) the only question that is to be decided, and that is, whether the act of last session is a constitutional law. For I beg members of this House to remember that the gentleman has here distinctly denied that he puts this case upon the ground of fraud at all; and yet, sir, I am not mistaken in presuming that he is now basing his hopes for the success of the measure upon a sentiment pervading this House, which assumes that the passage of the act of 1861 was procured by fraud. And yet, sir, the last argument of the gentleman who has made himself most prominent in the discussion of this question, distinctly repudiates that as the ground upon which they ask its repeal. And the gentleman from Washington, (Mr. HOPKINS,) who introduced the resolution instructing the Judiciary Committee to report on this; also rises in his place, and distinctly states that he bases his opposition to the act of last session, upon grounds totally apart from any question of fraud. Yet, can any man shut his eyes to the fact, that it is expected that this House shall pass this bill, because there was fraud? Gentlemen of this House know that this measure, in its whole length, breadth and thickness, has been instigated and sustained by the idea that there was fraud involved in the act—by procuring its passage, at the instance of the compavy, and by that, corrupting the members of the Legislature. Yet, sir, let it be borne in mind, this doctrine is now distinctly repudiated by both of the getlemen who have most prominently taken this measure in hand.

Much reference has been made dnring this controversey to the case of Fletcher *vs.* Peck. When I before spoke, I supposed this case to be fully understood, and I did not read from the decision at all. Yet, sir, I am free to say, with all due deference to the gentleman from Allegheny, (Mr. WILLIAMS,) that his interpretation of the scope of that case is entirely apart from the correct view of the decision. With that lawyer like ingenuity to which I a moment ago referred and which he so adroitly and most ably exerts, he directs the attention of the Legislature to a particular fact in the case, as though that were the controlling ground upon which the decision was made. Now, nobody pretends to deny that this was a question of private rights between individuals, or to assert that the State itself was directly involved in the question. Yet, sir, this being one of the incidental facts of the case, the gentleman attempts to impress the House with the notion that that was the point of the case, that that was really the question on which the case hinged.

Now let me read:

"The lands in controversy vested absolutely in James Gunn and others, the original grantees by the conveyance of the Governor, made in pursunce of an act of Assembly to which the Legislature was fully competent. Being thus in full possession of the legal estate, they, for a valuable consideration, conveyed portions of the land to those who were willing to purchase. If the orginal transaction was infected with fraud, these purchasers did not participate in it, and had no notice of it. They were innocent. Yet the Legislature of Georgia has involved them in the fate of the first parties to the trancaction, and, if the act be valid, has annihilated their rights also."

Here we have a statement of the facts in the case. In discussing the question involved, Chief Justice Marshall uses the following language:

"The Legislature of Georgia was a party to this transaction; and for a party to pronounce its own deed invalid, whatever cause be assigned for invalidity, must be considered as a mere act of power which must find its vindication in a train of reasoning not often heard in courts of justice.

"But the real party, it is said, are the people, and when their agents are unfaithful, the acts of those agents cease to be obligatory. It is, however, to be recollected that the people can only act by these agents, and that, while within the powers conferred on them, their

acts must be considered the acts of the people. If the agents be corrupt, others may be chosen, and, if their contracts be examminable, the common sentiment, as well as common usage of mankind, points out a mode by which this extermination may be made, and their validity determined."

That means the Supreme Court—nothing else.

"If the Legislature of Georgia was not bound to submit its pretensions to those tribunals, which are established for the security of property and to decide on human rights, it might claim to itself the power of judging in its own case; yet there are certain great principles of justice, whose authority is universally acknowledged, that ought not to be entirely disregarded.

"If, the Legislature be its own judge in its own case, it would seem equitable that its decision should be regulated by those rules which would have regulated the decision of a judicial tribunal. The question was in its nature a question of title, and the tribunal which decided it was either acting in the character of a court of justice, and performing a duty usually assigned to a court, or it was exerting a mere act of power, in which it was controlled only by its own will."

Now, how closely analogous this is to the present case. It is the precise point of the argument on this branch of the case. There were other points; but the Supreme Court argued here as to the power of the courts to investigate as to alleged fraud in the Legislature; and concerning their power over that question, the courts say distinctly that the Legislature could not repeal that law, no matter for what reason it was passed. That is the doctrine of this case—that it was not competent for the Legislature to annul that law, vested rights having accrued under it, and it having passed beyond their jurisdiction.

Again, it is said—

"If the Legislature feel itself absolved from those rules of property, which are common to all the citizens of the United States, and from those principles of equity which are acknowledged in all our courts, its act is to be supported by its power alone, and the same power may divest any other individual of his lands, if it shall be the will of the Legislature so to exert it.

"It is not intended to speak with disrespect of the Legislature of Georgia, or of its acts.—Far from it. The question is a general question, and is treated as one. For, although such powerful objections to a legislative grant as are alleged against this, may not again exist, yet the principle, on which alone this rescinding act is to be supported, may be applied to every case to which it shall be the will of any Legislature to apply it. The principle is this: that a Legislature may, by its own act, divest the vested estate of any man whatever, for reasons which shall, by itself, be deemed sufficient."

"In this case, the Legislature may have had ample proof that the original grant was obtained by practices which can never be too much reprobated, and which would have justified its abrogation, so far as respected those to whom crime was imputable. But the grant, when issued, conveyed an estate in fee simple to the grantee, clothed with all the solemnities which law can bestow. This estate was transferrable; and those who purchased parts of it were not stained by that guilt which infected the original transaction."

Now, this remark deserves attention. The charge in this case was that the members of the Legislature were corruptly influenced by the fact that they were to have an interest in a part of the land conveyed by them as agents of the State. The court does not say that so far as those individuals were concerned, the grant might have been void; the court does not even go so far as to decide that; but they say—"the grant when issued, conveyed an estate in fee simple to the *grantee*, clothed with all the solemnities which law can bestow."

The language in continuation refers to that branch of the case to which the gentleman from Allegheny has alluded; but he carefully avoided a reference to that part of the case in which the court considered the impropriety of discussing at all the doctrine that one Legislature can repeal the act of another, under which rights are vested, on allegations of fraud and corruptions of the Legislature.

Mr. WILLIAMS. Does the gentleman say that the question before the court in that case was that which he now speaks of?

Mr. ARMSTRONG. Well, the gentleman some time ago, stated that he could not comprehend. Now, he is not ordinarily lacking in that particular, I confess. I do distinctly state, sir, that the Supreme Court in this case did argue, in the very language which I have read. The gentleman has read this case; yet for some reason, known best to himself, he did not see fit to refer to this part of it.

Mr. WILLIAMS. I read the summary of the case.

Mr. ARMSTRONG. Well, it was a very summary indeed. [Laughter.]

Mr. BANKS. The point to which the gentleman alludes was not the question of the case.

Mr. ARMSTRONG. It was not the chief question of the case, as I am well aware, for this reason: the point arose between third persons, who had become interested; there is no dispute that this is the point of the case. But the Supreme Court went on to discuss the very question

which is now in controversy, and here is their opinion; and there is not another case in the books in which that very question ever was discussed, so far as I am now aware. The whole legislative and the whole judicial history of the world cannot produce a case where such a right has been maintained. Let the gentlemen who propose to vote for this bill produce a single case—just one. I say, sir, it cannot be done. How could the Supreme Court undertake to decide a question involving alleged corruption of the Legislature. They could not get the Legislature before them. There is no writ, no pleading on which it could be done.

But, sir, even this distinction will not in the least avail them, for the rights of very many third persons are involved under this act—not only as landholders and stockholders in a company, to whose lands and stock this act gave additional value, and who have purchased on the faith of it; but large sums have been expended upon many of the various railroads mentioned in the act.

But, sir, the gentleman speaks of technical arguments; but the technicalities rest solely with himself. I am arguing this as a great question of public liberty. I am maintaining that this encroachment of the Legislature upon the powers of the judiciary is dangerous. The judiciary is as much a part of the government as the Legislature. The rights of the people are just as much involved in maintaining the just jurisdictions of the courts as in preserving the legitimate powers of the Legislature.

Besides, sir, if the act of the last session is to be passed upon by the Legislature, it follows that there is to be a decision without a hearing; contrary to the very principles of justice which require that the rights of parties should not be passed upon by any tribunal without a hearing, and without evidence. Where are the parties? How can the Pennsylvania railroad come before this Legislature, and answer these charges, or defend their contract? Their rights are to be taken from them, without a hearing, and without evidence. Will any man pretend to deny this? Who speaks for them? No one. In the sovereignty of our pleasure, we are pleased to take away vested rights, without a hearing and without evidence; and we would call this justice.

The gentleman speaks of the *petitio principii*. If he could bring himself to speak in English, he would say, we "beg the question." But, is not his argument a most striking illustration of the *petitio principii?* He tells us that the act in question is unconstitutional, because there is no consideration; and then he tells us that there is no consideration, because it is unconstitutional! This is the plain interpretation of his argument; if it does not mean that it means nothing. He tells us that the Legislature could not pass this law for want of constitutional power, and that, therefore, the parties were not competent, and that there could be no consideration, because the constitutional power was lacking; and then he turns around and tells the law is unconstitutional, because it was passed without constitutional power. Where is the *petitio principii?* This is his argument stripped of all its falacies. It means simply that the Legislature lacked constitutional power to pass this act, and then the act is unconstitutional because they did pass it without power. This is the correct interpretation of the gentleman's views.

Now, I maintain that the whole question involved in this case is one of judicial interpretation, and that the question must go before the courts for adjudication; it cannot be decided otherwise, or in any other place. That is the whole strength and force of my argument—that we must refer this question to the only tribunal that can decide it. Let us do it in a manner which will elicit a direct and specific decision which will set the question at rest forever. The rights of the parties are too important to be left longer suspended upon doubts.

As to the argument against the Supreme Court, it is a year or more since I have heard the gentlemen say that he does not read the decisions of the Supreme Court. This I will say, that upon the questions decided in the Allegheny bond case the decisions of the courts of Pennsylvania have been sustained by the decisions of the courts of, I believe, every State in which the question has arisen; I am not aware of any exception—and I have a refereuce to many cases to which I can refer him. In addition to that, the very question involved in those cases has been decided by the Supreme Court of the United States, in accordance with the decisions of our own courts. I suppose the next chapter in the history of our judicial tribunals will be that the gentleman will not read the decisions of the Supreme Court of the United States, which would be a great injury to them I confess.

Now, sir, what had the question of the Allegheny bonds to do with this case. The gentleman seems saturated with Allegheny bonds. You cannot squeeze him anywhere, however lightly, but he leaks them out upon you. [Laughter.] He has Allegheny bonds bristling in every hair of his head. But, I have no occasion to complain on that point. Allegheny county is quite able to take care of herself, and I have no doubt that she will pay her bonds all in due time; and my friend, the other gentleman from Allegheny, (Mr. BIGHAM,) must remember, in regard to this Allegheny bond case, that he was in the Legislature, and urged the passage of the bill which authorized trustees and executors to make investments in the bonds of Allegheny county.

Mr. WILLIAMS. Railroad bonds.

Mr. ARMSTRONG. General bonds.

Mr. BIGHAM. There were no railroad bonds issued at that time.

Mr. ARMSTRONG. That is a different issue. I am almost sorry that I have referred to for I would not tread on the gentleman's corns for the world.

Well, sir, the fact is that no one disputes that the holders of Allegheny bonds have suffe deeply from the failure of the city and county to meet those obligations; yet the gentlen from Allegheny has been foremost in the effort to break down the credit of his city, and en these enormous losses upon whoever has trusted in her faith. Contesting the question at ev point, he has been borne back by the strong arm of the law, and vents his disappointment wholesale condemnation of the judges. So deeply has he allowed himself to be involved in t distrust, that he would not even refer a constitutional question to their adjudication—and y sir, he cannot avoid it! The Supreme Court will decide this question, despite all the act legislation which can be passed between this time and the next session of the Legislature cannot be helped. To this conclusion it must come at last.

But, says the gentleman, the proposition now suggested only goes part of the way; it o places that part of the question which is involved in the judgement. It goes further; it propo that the execution shall be issued upon those judgments for the purpose of testing the quest of the *validity* of the act of last session. If that proceeding be instituted the question which v immediately arise before the court is, whether that act be valid or void; and the gentlem knows perfectly well that the proceeding proposed by me is an ordinary, and one of the b method of testing the constitutionality of acts situate as this is. There is no easier, better more direct way to raise the constitutional question than that proposed in my amendment. does raise the question, and it further directs, that if the Supreme Court shall decide that act is unconstitutional or void, in whole or in part, that the Attorney General shall proceed sue for and collect the arrearages of tonnage tax which are due. This is a plain direction to Attorney General of the State, directing him to proceed by due process of law to the collection the money—and it is proper that such direction should be given; because the presumption that the law is valid, and it would be unreasonable to expect the Attorney General, of his o motion, to dispute its validity.

The amendment, if it should be adopted, removes every difficulty in the way of collect the judgement, if it should be found that the act is void, and it further directs the Attorn General to institute legal process for the collection of the balance. It does not involve the St in the unnecessary expense of instituting their proceedings until the question is tested—as it and ought to be.

Now, sir, I believe I have replied to all the gentleman's arguments that occur to me, so as they have touched the merits of the case. I think that they have been fully answered; a the suggestion of fraud having been abandoned, I ask what is the ground upon which we shou refuse to adopt the proposition which I have submitted. Where does the gentleman stand? said very briefly and very distinctly that I was right in saying the question was whether this is a contract; and yet he very quickly hurried himself away from the consideration of th question. I think he did not pretend to give any reason why it is not a contract except to arg that the Legislature was not a competent party because it had no constitutional power to p the act. Sir, that is a begging of the question which beggars all begging that I have heard this discussion. It is the very question to be referred to the courts. Let it then be decided the only power competent to pass upon it. Let the gentleman not come here to beg from t Legislature, under the power of popular clamor, the decision of a question which by his o showing they cannot finally decide—and whose decision if made could not stand for a mome The whole tenor of the argument is to urge the Legislature to do what in the same breath admits they have no power to do. I believe these remarks answer the argument of the gent man so far as they have approached to a fair discussion of the questions at issue. Not one sou reason has been given to show that the act, which is beyond all dispute in the form of a contra is not a valid or subsisting contract. Not one authority has been cited, nor can be cited show that the act is not fully binding upon both the parties, nor to discredit the authorities I h adduced to show that it is under constitutional protection. The suggestion of fraud is abandon and not one inch of solid ground is left to stand upon, except to bow in submission to the clam with which it is alleged the people demand the repeal. Sir, I mistake them much if they des to attain a limited advantage, such as this would be by breaking down the surest safeguards all the liberties they enjoy. The safety of the people rests in the decision of governmental powe and it would be opening the flood gates of evil to establish doctrines which, in their tenden are so inevitably disastrous.

Sir, I regret to have again trespassed so long upon the patience of the House. I must retu my thanks for their considerate attention.

Mr. KANE argued that the amendment, as proposed by Mr. ARMSTRONG, is impracticable, a would not in a legal point of view be of any value. That it was incompetent for the last Leg lature to pass it for want of constitutional power, and that it was a question of public policy a not one of contract.

At this point Mr. BLANCHARD moved that the further consideration of the bill, togetl with the amendments, be postponed indefinitely.

In reply to Mr. KAINE, Mr. ARMSTRONG said: I am very glad that this motion has been de—not because I would desire particnlarly that the motion should prevail, but because will open the discussion of this question upon its merits, and every man who desires to cuss it, in any of its aspects, can have an opportunity to do so. I had not intended to speak ther on this question; and I do not now intend to address myself to the question at large, simply, as a matter of explanation, to state wherein the gentleman from Fayette, (Mr. INE,) has misconceived the entire bearing of this amendment.

The gentleman has correctly stated the process by which this matter would come before the rts. He has correctly stated that when the execution issnes, the act of 1861 will be interposed the company, and the case will go, in the ordinary process, known to the courts, to the Sume Court for adjudication. Now, that brings up the entire question, in all its bearings, and every relation which the law can have to the interests of this company. It brings it upon the al point, which underlies this law, and the only point, I believe, on which there can be any estion whatever, as to the constitutionality of the act; and that is as to the seven hundred and ty-one thousand dollars, already in judgment, and which, as was argued by myself last winter, conjunction with my friend from Allegheny, was appropriated to the sinking fund, and which ing in the sinking fund, could not, as is contended, be diverted by an act of Assembly. I still cline to believe that that is a correct position—not without any doubts, I am free to say; yet may prove to be correct. Now, in what manner can you test whether it be a correct position? at is the point. How can it be tested? The gentleman suggests, "Let this repealing act be acted." What would be the operation of that? The repealing act is brought to the notice of e court, and the conrt, we will snppose, declares that repealing act void. Does the decision go ther? not a whit; the court stops when it has decided that particular question. The repealing t is declared void; that is all; it goes no farther. How does it leave the question with regard the constitutionality of the act of last year? It leaves this question to stand precisely where stands now. It leaves the whole question open, just as if there had been no discussion of the estion before the Supreme Court.

Now, that is just the difficulty which I wish to avoid. I wish the question brought up in such distinct form that the State, the people at large, and the company, shall be clearly and definitely formed as to their rights.

The gentleman from Allegheny discussed this matter last winter upon an amendment offered y myself, providing that those seven hundred and sixty-one thousand dollars should be paid into e State treasury; and the gentleman at that time confined his remarks upon the constitutionality the bill, to that point. The whole course of his argument at that time had reference to the ct that the bill proposed to release seven hundred and sixty-one thousand dollars, already virtually in the sinking fund, and, therefore, under the grasp of the Constitution, and not to be ken ont of it by a mere act of Assembly. I maintain that, in reference to the constitutionality of his law, that is now the only point having sufficient dimensions to deserve serious consideration.

As to the act itself being a contract, I look upon that sir, as being so entirely clear as to be arcely susceptible of any dispute.

Now, the operation of this amendment would be, that the vital qnestion would be distinctly ettled by adjndication upon that very point. If we simply pass a repealing act, and the Supreme ourt declare that to be unconstitutional, it leaves the other question without adjudication at all -it leaves it just as nnsettled as it is now; because the Snpreme Court would pass upon that act n general grounds; and this repealing act might be void for this reason or for that, leaving the ther act precisely where it is.

While upon the floor, allow me to say a word or two npon the question of fraud. There is ot now a voice in this Honse that says that the qnestion of fraud is to be examined in connection with this bill. It is not pretended to be alleged at this time that the attempt to epeal this act rests on the ground that the act was founded in a fraud perpetrated upon the egislature. If that were the pretension, the question is already settled by the Snpreme ourt of the State of Pennsylvania. I refer to the case of Jones *vs.* Jones, which will be found n 2 Jones, p. 350. This was a case in which the Legislature had passed an act divorcing two ersons. The constitutional prohibition extends to certain grounds of divorce. If the ground f divorce was within the constitntional prohibitions, then the act of divorce was void. The raud was alleged to consist in a deception practiced upon the Legislature to the ground of divorce.

It was offered to prove—

"That the said act of Assembly was procured by fraud, falsehood, and undue means, and without any notice to this defendant; that Mr. S. sedulously concealed from the members of the House of Representatives from this county, all knowledge that any of their constituents were connected with the said bill, but represented that the said application was from a poor woman in Philadelphia, who had been violently expelled by her husband from her home by his setting dogs upon her, causing her to fall on the wood pile, and cruelly beating and evil treating her; all of which was utterly nntrue; that he called upon one of the members of the House of Representatives, and requested him to call up this bill, stating that he could not trust the Montgomery county members, and upon being appealed to, to know if it was right, replied it was."

The distinct attempt, as brought to the notice of the court in this case, was to prove co ruption and fraud in the Legislature in passing an act of Assembly. Justice Lowrie disposes the case in a very few words. On page 357, he says: "It would be unbecoming and discourteo to the legislative body, to admit such evidence, which is excluded by the case of Fletcher Peck." The very case, the construction of which has been disputed here. Judge Lowrie di poses of the question in these brief terms: I have read his entire language on that point. He was a distinct offer made to prove that the act of Assembly was passed in this House by fraud lent and corrupt means; by the corruption of members of the Legislature, and by deceptio practiced upon them; and the court excluded the evidence because such an inquiry on the part was "unbecoming and discourteous." That is the whole length and breadth of th case. The court would not even hear the testimony. Now, sir, the case could not go befo any court in any shape in which the question of fraud could be tried judicially. I take th broad ground that the judicial tribunals are not competent to try a question of fraud, su posed to be practiced by the Legislature or the Governor in the passage of an act of Assembl But, sir, as that matter is not now pressed, and lies outside of this case, I will leave it. I hav nothing more to say upon that point.

The question, then, after all the discussion, seems to bring itself down to this: Is this contract? If it be a contract, I suppose even the gentleman from Allegheny will not pretend t say that the Legislature can abrogate or annul it against the consent of the contracting partie Gentlemen are compelled to assume the ground that it is no contract; and yesterday the allegatio was made that it was no contract, because there was no consideration.

Mr. WILLIAMS. May I ask the gentleman a question?

Mr. ARMSTRONG. Certainly.

Mr. WILLIAMS. I desire to know whether the gentleman did not vote for a divorce bil within two or three days; and whether the matrimonial engagement is not a contract? Did h not vote to dissolve a contract, which is the most solemn of all contracts?

Mr. ARMSTRONG. The gentleman now endeavors to put me in a dilemma; he thinks cannot answer so plain a question. I will state to the gentleman that the question as to whethe or not the Legislature can dissolve the contract of marriage, has been discussed and disputed almost from time out of mind. The question has been repeatedly before the Supreme Court o the United States. It has been held in some books that that contract could not be thus dissolved but that opinion has been overruled, and the better opinion of the present day is that th matrimonial contract is not such as is made irrevocable under the terms of the Constitution; and that therefore it may be repealed. I suppose that the gentleman wanted to put me in a dilemma by asking me a very hard question. I do not think it is one very hard to answer.

Mr. BIGHAM. With the permission of the gentleman from Lycoming, I want to state on fact.

Mr. ARMSTRONG. In one moment; I am not through with the other gentleman from Allegheny. That gentleman knows very well that the contract of marriage can never be dis turbed until one of the parties has violated the contract. Who ever heard of the divorce of any couple until one of the parties have violated the contract? Never, sir; and it is upon that very ground among others that the Supreme Court has held that this is not one of those contracts that are within the constitutional prohibition. The books are full of such cases. The gentleman from Allegheny did not need me to tell him this.

Now sir, if the gentleman's colleague has a question——

Mr. BIGHAM. It is no question; but I desire to state a fact. I sent to the office of the prothonotary of Dauphin county, and I have here a note from the prothonotary stating that those judgments are already satisfied by the Attorney General of this State. I want that fact to be known in the discussion of the question.

Mr. ARMSTRONG. The general question would still be open. If that be the fact, I am free to say that I have been misinformed. In that case, all that would be necessary is a mere modification of the proceedings to make them conform to this altered state of the record; it would not by any means necessarily vitiate the proceeding. I am not prepared to admit the fact, for I know nothing about it The gentleman may be misinformed.

Mr. BIGHAM The member from this county, I presume, knows the handwriting of the prothonotary——

Mr. ARMSTRONG. I am not disputing the gentleman's statement.

Mr. BIGHAM. I will read:

"They are satisfied by the Attorney General. Answered upon inquiry.

"J. C. YOUNG, *Prothonotary.*"

Mr. ARMSTRONG. It may be so. If so, it is in pursuance of the act of 1861. The money has not been paid, and, under the proposed amendment, it would be the duty of the Attorney General to proceed to its collection. His first motion would be to open the judgment—that would be all. I need not inform any lawyer how that is to be done. The fact stated by the gentleman does not affect the question in the slightest degree. It would be a very easy matter to proceed, by asking a rule to open the judgment, or by suing out a *scire facias* upon the judgment, and bringing up the whole question upon that.

However, I do not propose to be diverted from the question, (because it still remains open,) is this a contract? Upon this question, in addition to the authorities I have already cited, I will read from Smith's Commentaries upon State and constitutional law. Discussing the provision of the Constitution, which forbids any law impairing the obligation of contracts, this commentator says:

"We are in the next place to consider what laws are within the prohibition against impairing the obligation of a contract. It should be remarked, in the first place, that the objection to a law on the ground of its impairing the obligation of a contract, does not depend on the extent of the change which the law may make in it; that any deviation from its terms, by postponing or accelerating the period of performance which it prescribes, or imposing conditions not expressed in the contract, or dispensing with the performance of those which are, however minute or apparently immaterial in their effect upon the contract of the parties, impairs its obligation, and is within the constitutional prohibition.

"The language in this clause is general, and applies to all contracts which respect property or some object of value, and confer rights which may be assessed in a court of justice. When the Constitution was framed, the term contract had a known legal meaning, as definite and as well understood as a bill of attainder, or an *post facto* law. This meaning was adopted, and became a part of the instrument as fully as if it had been expressed in words. The common law had defined the term. It had declared a contract to be a compact between two or more parties; and whether it relates to real or personal estate, or was executed or executory, or rested in parol, or was under seal, the Constitution preserved it inviolate from the action of a State Legislature, so far as it created rights, or contained obligations binding on the parties in law or equity. The character of the parties to the compact was not intended to prevent the general application of the prohibition. Whether *a State*, a minor municipal corporation, or an individual is a party, is immaterial. All are embraced in the same provision. The rights and duties of the contracting parties, whoever they may be, are determined by the contract, and are protected from legislative interference and control.

This writer, in continuation, declares that the true interpretation of the constitutional prohibition is, that—

"Whatever obligations are created or rights secured, shall not be impaired by the act of the Legislature; thus leaving the questions as to the nature, form, extent, construction, *and validity of the contract, and the manner of enforcing it*, to be determined by the judiciary department of the government, and only prohibiting the Legislature from passing a law which shall impair the obligations or rights created by it.

"If the contract be one which the Legislature has the constitutional power to make, and it be executed, and no further act remains to be done by the State or its agents—as if a grant of money be made and the money be delivered, of of land, and the legislative act is itself the conveyance, not requiring the execution and pelivery of a deed or other instruments, nor any to her act to be done to complete it—the contract has passed to the form of a grant; it has become a contract executed, and the law in which it originates cannot be repealed.

"The true meaning of this clause of the Constitution may be stated as follows: The body upon which the prohibitions rest, is the legislative department of the State. The subject of the prohibition is every contract relating to property or some object of value, and which confers rights which may be asserted in a court of justice. It is immaterial whether the contract be one between a State and an individual, or between individuals only; the contracting parties, whoever they may be, stand, in this respect, upon the same ground. The obligations imposed, and the rights acquired by virtue of the contract, cannot be impaired by a legislative act. A law which discharges these obligations, or abrogates these rights impair them. A constitutional act of legislation, which is equivalent to a contract, and is perfected, requiring nothing further to be done in order to its entire completion and perfection, is a contract *executed*; and whatever rights are thereby created, *a subsequent Legislature cannot impair*. The obligation created by a constitutional law, which is in the nature of an executory contract, and is supported by a sufficient consideration cannot be annulled at the pleasure of the Legislature."

I know that it is very wearisome to the House to be reading law in this manner; it is very dry; but, at the same time, this is a dry question, and this is a question of law for this House to consider. The question is whether we are transcending the proper limits of legislative power, and attempting to encroach upon the distinctive judicial functions of the government, and it is one of the utmost importance. The same authority continues: "It has also been settled that a contract entered into between a State and an individual, or between a State and *a corporation*, is as fully protected by this prohibition, as a contract between two individuals."

"A law made after the existence of a contract, which alters the terms of it by rendering it less beneficial to the creditor, or by defeating any of the terms upon which the parties had agreed, impairs its obligation within the meaning of this clause of the Constitution."

"The decision in this case, (Nelson *vs.* Allen and Harris,) as well as in the case of Bristoe *vs.* Evans and McCamphell, decided previously in the same court, was put upon the ground, that the bill of rights had declared, '*that no law impairing the obligation of contracts shall be made*,' a grant from the State was a contract between the State and the grantee. It was a contract executed, and it contained binding obligations on the parties."

Sir, the books are full of such language. I fear I weary the patience of the House by referring so copiously to these authorities.

The case of Fletcher *vs.* Peck, so often referred to, is commented on by this writer; and it is treated as embodying the simple point of the want of power in the Legislature to repeal a contract.

"The Legislature of Georgia authorized the sale of a tract of wild land belonging to the State, and a grant thereof was made by letters patent, in pursuance of that authority, to the Georgia company. A succeeding Legislature declared the act to be void. It was held that the former grant was an executed contract, and that the former act could not be repealed, so as to rescind a sale under it, without impairing the obligation of an executed contract."

Now, I desire to call the attention of the House to another matter to which I have heretofore referred—*the dangerous innovation which is involved in this idea of legislative construction.* On this subject the same authority holds this language:

"It is much to be doubted whether a single case can be found, where it has been held that much stress should be given to a legislative exposition of a constitutional provision, when that provision was one intended to be in restraint of the power of the Legislature itself. * * * * To give much weight to a construction by this department of the government of its own powers, and allow its own construction to control, would be a dangerous doctrine, as it would lead to dangerous consequences."

"If a legislative exposition of a constitutional restriction upon its own power, is to receive so much respect as to be of controlling force, binding and authoritative upon those whose duty it may be to pass upon the constitutionality of a particular legislative act, or is to be received as evidence of a true construction, then the constitutional restriction imposed may, by the mere force of such construction, be rendered ineffectual in restraint of those upon whom it was intended as a check. This would be carrying the doctrine of legal nullification to an extreme unprecedented in the history of any government. If we concede to the Legislature this judicial attribute, and make it exercise evidence of what the Constitution is, then the power restricted has only to pronounce several successive erroneous judgments, and thus elude the restriction by legislative exposition. This would be carrying the doctrine of legislative omnipotence to a greater extent than was ever claimed, even by a British parliament. The parliament of England rests its claim to omnipotence upon the fact that it is unfettered and unrestricted by a written constitution, expressive of the will of its constituents; that it stands in the place of the people, and speaks the language of absolute sovereignty; hence, that its powers must of necessity be trancendental and omnipotent in the scale of political existence, and therefore can mould the constitution at its will. It is far otherwise under our form of government. The spirit, genius and political institutions, rest upon principles which are at war with the doctrine of legislative omnipotence; ours is a government founded upon an express written compact, reduced to exactitude and certainty, expressive of the sovereign will of the people fixing the limit and marking the bounds of legislative authority and power. The Legislature, instead of being omnipotent, must yield to its force, submit to its restraint, and bow to its authority. This written compact originated in a spirit of distrust of legislative authority, and from a conviction that legislative omnipotence was but another name for despotism. The evidence of that will—the sovereign will of the people—rests not in the volition or judgment of those intended to be restricted by its own omnipotent fiat.

"Under our form of government, the Legislature is the creature of the Constitution; it owes its existence to that instrument; it derives its powers from it—that is, the voice of the people, in their original and unlimited capacity, fixing the limits of legislative power. It is the mandate of the Creator, directed to and obligatory upon the creature; its authority is alone sovereign, absolute and supreme. If the creature of the Constitution can pass judgment upon its obligations and its judicial determinations of its powers be clothed with the attributes of a judicial exposition, authoritative and of controlling force, then legislative omnipotence in this country would exceed that of the British parliament to an extent at least commensurate with the force of a written constitutional restriction, which it weighs down by the force of its judicial expositions; while the energies of parliament are only directed to the exercise of powers unlimited and uncontrolled, legislative power in this country would go much further; it would break the fetters the Constitution has wrought out, throw off the restraint it has sought to impose, and annihilate the written will of the people. Parliament never carried its arrogance to such extent; it never, except in days of revolution, nullified the written will of the people it represented by the force of parliamentary exposition; it never trod under foot a written compact; it never sat in judgment in its own cause, and demanded, for its decision in such case, respect paramount to *Magna Charta.* The utmost stretch to which legislative exposition can be carried is that it may be considered and respected; it may be consulted as an index to other minds; it may be regarded as the embodiment of the views of predecessors, or of one department of the government. But this respect cannot be clothed with the attribute of judicial authority. The evidence of what were the views and opinions of others can never make those views and opinions evidence that they were right; it can never ripen a wrong opinion into a right one."

I will close these quotations by reading the language of one of the sages of the law, as here cited:

"To contend that courts of judicature must obey the requisitions of an act of the Legislature, when it appears to have been passed in violation of the Constitution, would be to contend that the law was superior to the Constitution, and that the judge had no right to look into it and regard it as the paramount law. It would be to render the power of the agent greater than his principal, and be declaring that the will of only one concurrent and co-ordinate department of the subordinate authorities under the Constitution, was absolute over the other department, and competent to control, according to its own will and pleasure, the whole fabric of the government, and the fundamental law on which it rested. The attempt to impose restraints upon legislative power would be fruitless, if the constitutional provisions were left without any power in the government to guard and enforce them"

"It (the Legislature) is constantly acting upon all the great interests of society, and agitating its hopes and fears. It is liable to be constantly swayed by *popular prejudice and passion*, and it is difficult to keep it from pressing with injurious weight upon the constitutional rights and privileges of the other departments; while an independent judiciary, venerable by its gravity and its wisdom, and deliberating with entire serenity and moderation, is peculiarly fitted for the exalted duty of expounding the Constitution."

I will not weary the House by reading further. The books are full of such language. I merely reiterate that this doctrine, which asserts the power of the Legislature to determine authoritatively questions of constitutional construction is regarded as a dangerous innovation, and one not to be sanctioned by legislative practice. I will not longer detain the House.

REMARKS OF

Hón. JAMES CHATHAM,

—OF—

CLINTON COUNTY.

Mr. CHATHAM. I shall not undertake, Mr. Speaker, to discuss the legal aspect of this question, inasmuch as that part of the subject has, I think, been fully discussed by gentlemen who have preceded me—I have reference to the gentleman from Lycoming, (Mr. ARMSTRONG,) and the gentleman from Huntingdon, (Mr. SCOTT.) But the question whether the act of 1861 is a contract, is one for all of us to consider, before we vote on the question. If it is a contract, we, as members of the Legislature of Pennsylvania, according to the Constitution of the United States, have no right to repeal the act. If it is not a contract, and if the interest of third parties have not been vested under it, then we have the power to abolish or repeal it. Let us examine for a few moments the nature of the case now presented to this House.

I allege, with the gentlemen who are opposing this bill, that there was a contract—that the law passed by the supreme power of this State, included a contract; and that the parties thereto were qualified to make or enter into such a contract. What is the Pennsylvania railroad company? It is a company, sir, with which we are all acquainted. It is a company that was incorporated by the Legislature of Pennsylvania in 1846. In that act of incorporation, there were certain stipulations entering into that contract. The company was compelled by the conditions of that act of Assembly to transport the troops or volunteers of Pennsylvania in case of war. Have they fulfilled that part of the contract? Most undoubtedly they have. When our country, as the gentleman from Washington has said, was overrun by this monster rebellion, we found that railroad company stepping in, according to the act of incorporation, and carrying troops through this State in quick time, in order that the requisition of the President of the United States might be complied with; and had it not been for the energy of that Pennsylvania railroad company, together with the patriotism of the people of Pennsyvania, our capitol at Washington might this day be in ashes.

The parties to the act of 1861, were perfectly qualified to make a contract. On the one hand, we have the Pennsylvania railroad company, an artificial person, created by the Legislature of Pennsylvania; and on the other, we have the Legislature of Pennsylvania, the agents of the people of the State, entering into this contract on the part of the State; and I hold that, when the agents of the State of Pennsylvania are acting within the bounds of their agency—within the limits of the purpose for which were appointed—the State is bound by their acts. There are two classes of agents. Those of one class are limited to certain particular things; those of the other class are unlimited. When the members of the Legislature come here and pass laws for the people of Pennsylvania, they act in the capacity of agents, and they have a right to pass laws; they have a right to enter into contracts, when they think it is for the benefit of the State of Pennsylvania.

Although some gentlemen on the opposite side have abandoned that charge of fraud, made against the company and the last Legislature, yet I maintain that the charge had much to do with bringing this question before the House this winter; and the idea had been advanced here, that the law which the bill before us proposes to repeal, is not binding, having been passed by corrupt means.

Now, sir, permit me to say to that, notwithstanding I was opposed to that act, notwithstanding had I been here in 1861, I would have opposed its passage, yet, inasmuch as that act has passed; inasmuch as the party on the one side have complied with the conditions of that contract on their part, I say it would be wrong for us now to pass a law repealing the act of last winter.

But gentlemen say there was no consideration. This seems to be the strength of their position; that inasmuch as there was no consideration entering into this contract, therefore it was void or voidable on the part of the State of Pennsylvania. Mr. Speaker, I hold that there was a consideration. I hold that at the time the contract was entered into, it was supposed on the part of Pennsylvania, by her agents, that there was a sufficient consideration; otherwise that act could not have passed these two Houses. It is not merely an act of the Legislature. We find that the administration—the executive power of this State—had something to do with this contract. It never could have become a law without the signature of the Executive, except by a two-thirds vote of both Houses. Then, I ask, will the administration stultify itself, and abolish the law that it has approved and ratified last winter? I think not. I think that, if gentlemen in this House would view this matter in its proper light, they would come to a far different conclusion from that to which they seem to have arrived. I am aware, Mr. Speaker, that a majority of the members of this House are in favor of this bill; yet, while I am aware of that fact, I am not afraid to stand upon this floor, or to stand before my constituents, and give a reason why I shall vote against the passage of this bill. I think it is unconstitutional. That part of the argument has, I consider, been fully sustained; I think that the legal positions which have been taken on this side of the question are incontrovertible, and they have not been successfully contradicted on the part of the friends of this bill.

The gentleman from Washington, (Mr. HOPKINS,) has stated that it is not necessary, under the act of incorporation, that the tax should be imposed upon tonnage. He makes an argument before this House, which he feels to be unanswerable, that there is no necessity, under this act of incorporation, for them to impose a tax on the tonnage that passes over their road. I hold—and I shall be sustained by the action of Legislatures that have preceded us—that the proposition embodied in the commutation act of 1861 is not unprecedented. Look back to 1855, and you will find a commutation act passed at that time, removing the tonnage tax on lumber and coal; and that act included not only the Pennsylvania railroad, but the Harrisburg, Lancaster and Mount Joy railroad. Why was this tax removed? Was it done because the State of Pennsylvania wanted to make a present to these companies? Not at all. It was done because the State of Pennsylvania did not want to have that trade, the coal and lumber trade, diverted from Philadelphia, and taken to New York and Baltimore. That is the reason, Mr. Speaker, why we are opposed to the passage of this bill; that is why we are opposed to imposing this tonnage tax again on the Pennsylvania railroad company. When we look at the western country, we find that Cleveland, Lafayette, in Indiana, Indianapolis and Chicago, are from one hundred to one hundred and fifty miles nearer to Philadelphia than they are to New York. We find that on account of this tonnage duty, the Pennsylvania road was not able to compete with rival roads; and therefore the trade was diverted from Pennsylvania, and taken to New York and Baltimore. Is this no consideration? Is this not a sufficient cause for us to look to the interests of this company, in order that the interests of the State may be advanced? I hold that it is.

Gentlemen have referred to the Sunbury and Erie railroad. Well, sir, what advantage will it be for us to have that railroad completed? Would that be an advantage to the State? Most undoubtedly it would. Would it be an advantage to secure the completion of all the other railroads to which that railroad company has been obliged to distribute these eight hundred thousand dollars? Most undoubtedly it would, because it would develop the resources of the country through which those roads pass, and bring in revenue to the State of Pennsylvania, by the increased valuation of the lands of the Commonwealth. The State of Pennsylvania has a deep and lasting interest in all these

roads. Look at the Bald Eagle Valley railroad. The Pennsylvania road has complied with the conditions of the agreement in the act of last session; by paying over to the Bald Eagle Valley road a portion of that distribution The interests of third parties have attached there; and in view of this fact, I do not care what fraud entered into that act of Assembly last year, it is not fraudulent in reference to third parties. We connot deprive third parties of the interest which has so attached to them.

In regard to the Sunbury and Erie railroad, has the State of Pennsylvania no interest there? Why, sir, it has been already said that the completion of that railroad will develop a part of this State which is larger than the whole State of Massachusetts; it will develop a mineral wealth that is superior to the mineral wealth of all the State of New York; and there has recently been a development there that has increased the wealth of Pennsylvania perhaps more than any other discovery of a mineral kind that has ever been made within the limits of the State. I refer, sir, to the discovery of oil. Sometimes during the discussion of this question, I have thought (although I do not wish to impugn the motives of any man or any set of men)—I have thought that I could see a reason why the gentlemen from Allegheny and those coming from that direction were opposing the law of 1861. Pittsburg seems to be a rival city to Philadelphia. If the Sunbury and Erie railroad is completed, it will divert the oil trade from Pittsburg and bring it down the Philadelphia and Erie railroad, thus taking a great deal of trade and patronage from the city of Pittsburg. Might not that be one explanation of this opposition? I say, might it not be? For the completion or success of the Philadelphia road depends upon the Pennsylvania company, who have possession of it now; and that company would derive its profit from the freight coming over the Philadelphia and Erie railroad, as well as if it should go to Pittsburg and come over the Pennsylvania Central.

Mr. Speaker, I hold that there is another interest in the State of Pennsylvania involved in the defeat of this bill. The restoration of this tonnage tax would defeat the project of finishing those connecting roads, because the completion of all those roads, to which these eight hundred and fifty thousand dollars are to be distributed, depends entirely upon the success of the Pennsylvania railroad company. Cripple the resources of that company, and you cripple the resources of Pennsylvania, because the interests of that road are so connected with the interests of Pennsylvania, and Philadelphia especially, that when you make a stab at the railroad, whose tonnage reaches Philadelphia from the great West, you interfere with the interests of the State of Pennsylvania: Philadelphia bears the same relation to Pennsylvania, that the city of Harrisburg does to the county of Dauphin. Build up Philadelphia, and you build up Pennsylvania; build up Harrisburg, and you raise the value of property throughout the county of Dauphin.

There is another consideration, Mr. Speaker, in reference to this question. The completion and the success of the Philadelphia and Erie Railroad, which depends on the Pennsylvania railroad company, will bring into market millions of acres of land that are now almost worthless. Land that is now averaging from fifty cents to two dollars, will be increased in value to from ten to twenty dollars per acre. Here are millions of acres now lying dormant, uncultivated and "un-come-at-able," as the saying is, because we have no avenue by which we can reach and develop the resources of that country. Then, sir, is it not important—is it not the interest of Pennsylvania to have that road succeed? Is it not an interest to us to have that country developed? The completion of this road will develop the mineral wealth of that section of the country; it will bring in to us its vast resources in regard to lumber, in which it is not surpassed by any section in any of the northern States. I think that by the increase of taxation alone, the completion of that road will bring into the treasury of Pennsylvania more than an equivalent for what has been taken by the act of 1861.

Then I hold, Mr. Speaker, that it is not only unconstitutional for us to repeal this act, but I hold that such a repeal is impolitic, unwise and inexpedient at this time, or at any future time. Such a step, I hold, is calculated to destroy the credit of Pennsylvania in the estimation of her own citizens and of those living outside the limits of Pennsylvania. Why should we pass any act that would injure the credit of Pennsylvania?—the old Keystone State, as we have been proud to call her, even before the rebellion, and since the rebellion we have only had additional pride in showing that Pennsylvania has been fixed still more firmly and gloriously in her position as the keystone of the Federal arch—that Pennsylvania stands second to no other State in the Union in her resources, in her ambition, in her energy, and in everything calculated to make a State great in

the estimatton of mankind. Then, I say, let us look well before we take the action which is proposed to us in this case. I ask, will those men who claim to be the supporters of the administration this winter, so stultify themselves as to enact a law repealing an act which they sustained at the last session? I hope not, sir. Will they place the Governor of this State in a position in which he will be compelled to refuse his signature to this bill, when passed through these two Houses? I hope not.

Then, in view of all these arguments, taking the law of the question, and taking into consideration the effect which our repealing enactment might have upon the credit and confidence of the people of this State and the people of other States, I hope that members will vote advisedly on this question—that they will think well before casting a vote for repealing an act that was passed by the supreme legislative power of this State, and which has gone into operation according to the terms of that agreement.